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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,789	04/09/2004	Lynda Livingston	A8723	8714
23373	7590	01/31/2006	EXAMINER	
SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037			HUYNH, KHOA D	
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Please find below and/or attached an Office communication concerning this application or proceeding.

6

<b>Office Action Summary</b>	<b>Application No.</b> 10/820,789	<b>Applicant(s)</b> LIVINGSTON ET AL.	
	<b>Examiner</b> Khoa D. Huynh	<b>Art Unit</b> 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 April 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 April 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>4/9/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the gasket is in a deformed manner between the spa tub and the rim portion as recited in claim 15, the different orientation as recited in claims 19 and 29, the different orientation is 90 degrees as recited in claims 20 and 30, the cover is a one-piece cover as recited in claims 21 and 36, the cover including a hinge as recited in claims 24 and 39, the cover does not include a hinge as recited in claims 25 and 40, and the cover is a two-piece cover that does not include a hinge as recited in claim 40 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New

Art Unit: 3751

Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 15, 19, 20, 29 and 30 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim 15 calls for the gasket is in a deformed manner between the spa tub and the rim portion. Such recitation is inaccurate. As understood from the specification and Figure 4, the gasket is in a deformed manner between the cover and the top rim of the spa when the cover is placed on top of the spa tub. The instant specification does not provide any detailed description to support the recitation of the gasket in a deformed manner between the spa tub and the rim portion.

Each of claims 19 and 29 calls for one of the layers is provided at a different orientation than the other layer of the layers. However, applicant, in the instant disclosure, does not provide any detailed description to show how one

layer arranging at a different orientation than the other layer. Even though applicant mentions that the barrier including layers laminated at different orientation (specification, page 9), applicant, however, does not provide further detailed explanations of how the layers could be arranged at different orientations in such a way as to enable one skilled in the art to make and/or use the invention.

Each of claims 20 and 30 calls for the different orientation is 90 degrees. However, applicant, in the instant disclosure, does not provide any detailed description to show how one layer orienting at 90 degrees with respect to the other layer. Even though applicant mentions that the barrier including layers laminated at different orientation of 90 degrees (specification, page 9), applicant, however, does not provide further detailed explanations of how the layers could be oriented at 90 degrees with respect to each other in such a way as to enable one skilled in the art to make and/or use the invention.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 25 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 25 calls for the cover does not include a hinge. However, claim 25 depends on claim 24 which calls for the cover includes a hinge. Therefore, it is unclear

Art Unit: 3751

what structural limitation applicant intends to cover when claim 25 calls for "a cover includes a hinge, wherein the cover does not include a hinge".

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 2, 4-9, 11-13, 16-18, 22-24, 31, 32, 34, 35 and 37-39 are rejected under 35 U.S.C. 102(b) as being anticipated by Pucci et al. (5974600).

Regarding claim 1, the Pucci et al. reference discloses a spa cover system. The system includes a spa cover (12) and a resilient gasket (74) provided at the bottom (38) of the spa cover.

Regarding claim 2, the gasket is made of elastomer which resembles rubber.

Regarding claim 4, the gasket (74) is adhesively bonded (via element 76) to the bottom of the spa cover.

Regarding claims 5 and 6, as schematically shown in Figure 8, the gasket is a solid material without a hollow space.

Regarding claims 7 and 8, the spa tub includes a rim portion (20) at a top of the spa tub, wherein the gasket is inherently deformed between the spa tub and rim portion to a sealed contact. As schematically shown in Figure 8, the gasket is a solid material without a hollow space.

Regarding claim 9, the gasket is made of elastomer which resembles rubber.

Regarding claim 11, the cover (as shown in Figure 5) further includes a first portion, a second portion and a hinge (58) provided at a top of the spa cover connecting the first and second portions.

Regarding claims 12 and 13, as schematically shown in Fig. 5, an edge (constitute by elements 48 & 54) of the first portion and an edge (constitute by elements 50 & 54) of the second portion are adjacent to one another, a space is provided between the edges and a part of the gasket is provided on the edges. Also, schematically shown in Figure 6, a flap (66) extends from the top of the spa cover into the space between the edges, wherein a resilient flap gasket (68) is provided at an end of the flap.

Regarding claims 16 and 17, the cover includes a core insulating material (42) and a cover material (constitute by elements 36 & 38 in Fig. 6) that surrounds the entire core insulating material. The Pucci et al. reference also discloses that the cover material includes a plurality of diverse waterproof layers (col. 5, lines 5-9), wherein at least one of the layers is a different material than the other layer (the layer constituted by element 38 is of a different material than the waterproof silicone applied between elements 48 and 42).

Regarding claim 18, the cover material is a multi-layer PVDC resin.

Regarding claims 22-24, the cover is a multiple-piece (two-piece) cover with a hinge (58).

Regarding claim 31, the Pucci et al. reference discloses a spa cover system. The system includes a spa tub (10) having a tub rim (20), a spa cover (12) and a resilient gasket (74) interposed between the tub and the cover and provided at the bottom (38) of the spa cover.

Regarding claim 32, the gasket is made of elastomer which resembles rubber.

Regarding claim 34, the gasket (74) is adhesively bonded (via element 76) to the bottom of the spa cover.

Regarding claim 35, as schematically shown in Figure 8, the gasket is a solid material without a hollow space.

Regarding claims 37-39, the cover is a multiple-piece (two-piece) cover with a hinge (58).

### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 3, 10 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pucci et al. (as discusses supra).

Even though the Pucci et al. reference does not specifically disclose that the gasket is foam rubber as claimed, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the



Pucci et al. reference by employing a gasket made of foam rubber. Such modification would be considered a mere choice of a preferred material on the basis of its suitability for the intended use since the use of a foam rubber gasket to minimize heat loss for a spa cover system is known in the spa cover system art (see cited US 4234973 as evidence).

10. Claims 1, 14-21, 25, 26-31, 36-38 and 40 (as best understood) are rejected under 35 U.S.C. 103(a) as being unpatentable over Hansen et al. (5970530).

Regarding claim 1, the Hansen et al. reference discloses a spa cover system. The system includes a spa cover (10, 110 or 210). Even though the Hansen et al. reference does not specifically disclose a gasket as claimed, it would have been obvious to one skilled person to take a position that the bead-like portion (constituted by the fold back of element 40 as schematically shown in Figure 4, 13 & 17 and labeled near reference # 46) is capable of being used as a resilient plastic-made gasket provided at the bottom of the spa cover.

Regarding claim 14, the gasket cross-section includes a thicker portion at an inner edge of the gasket and a thinner portion of an outer edge of the gasket.

Regarding claim 15 (as best understood), the spa cover system further includes a spa tub (12) having rim portion (where the bead-like portion contacted). In the closing configuration (Fig. 5), the gasket is obviously in a deformed manner for being disposed between the cover and the top rim of the tub. The outer edge of the gasket is at a position closer to an outside wall (18) of the tub than the inner edge.

Regarding claims 16 and 17, the cover (12) includes a core insulating material (28) and a cover material (20,22,40) that surrounds the entire core insulating material. The Hansen et al. reference also discloses that the cover material includes a plurality of diverse waterproof layers (col. 4, lines 26-47; col. 5, lines 40-59), wherein at least one of the layers is a different material than the other layer. Even though the Hansen et al. reference does not specifically disclose that the layers are laminated to one another as claimed, it, however, would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the Hansen et al. reference by laminating the layers together. Such modification would be considered a mere choice of a preferred bonding method for the layers on the basis of its suitability for the intended use especially since the use of laminated layer to form a spa cover is known in the spa cover system art (see cited US 5022101 & US 4857374 as evidences).

Regarding claim 18, the cover material is a multi-layer PVDC resin.

Regarding claim 19 and 20 (as best understood), as schematically shown in Figure 1, one of the layers (20 with crossed section directed to the right) is at a different orientation than the other layer (22 with crossed section directed to the left). The different orientation is obviously at 90 degrees.

Regarding claim 21, the cover (12) is a one-piece cover.

Regarding claim 25 (assuming claim 25 depend on claim 1), the cover does not include a hinge.

Claims 26-30 recites limitations that are similar to the limitations of claims 16-20 which have been rejected as discussed supra.

Regarding claim 31, the Hansen et al. reference discloses a spa cover system. The system includes a spa tub (12) having rim portion (where the bead-like portion contacted) and a spa cover (10, 110 or 210). Even though the Hansen et al. reference does not specifically disclose a gasket as claimed, it would have been obvious to one skilled person to take a position that the bead-like portion (constitute by the fold back of element 40 as schematically shown in Figure 4, 13 & 17 and labeled near reference # 46) is capable of been used as a resilient plastic-made gasket interposed between the tub and the cover and provided at the bottom of the spa cover.

Regarding claim 36, view as a whole, the cover is a one-piece cover.

Regarding claims 37, 38 and 40, the cover is made from a two-piece cover that does not include a hinge (Fig. 4).

### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoa D. Huynh whose telephone number is (571) 272-4888. The examiner can normally be reached on M-F (7:00-3:30).

Art Unit: 3751

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Khoa D. Huynh  
Primary Examiner  
Art Unit 3751

HK  
01/27/2006